

AMENDING TITLE 38, UNITED STATES CODE, TO REQUIRE THE SECRETARY OF VETERANS AFFAIRS TO INCLUDE AN APPEALS FORM IN ANY NOTICE OF DECISION ISSUED FOR THE DENIAL OF A BENEFIT SOUGHT

JUNE 25, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MILLER of Florida, from the Committee on Veterans’ Affairs,
submitted the following

REPORT

[To accompany H.R. 1405]

[Including cost estimate of the Congressional Budget Office]

The Committee on Veterans’ Affairs, to whom was referred the bill (H.R. 1405) to amend title 38, United States Code, to require the Secretary of Veterans Affairs to include an appeals form in any notice of decision issued for the denial of a benefit sought, having considered the same, report favorably thereon with amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Amendments	2
Purpose and Summary	9
Background and Need for Legislation.	9
Hearings	14
Subcommittee Consideration	15
Committee Consideration	15
Committee Votes	15
Committee Oversight Findings	16
Statement of General Performance Goals and Objectives	16
New Budget Authority, Entitlement Authority, and Tax Expenditures	16
Earmarks and Tax and Tariff Benefits	16
Committee Cost Estimate	16
Congressional Budget Office Estimate	16
Federal Mandates Statement	19
Advisory Committee Statement	19
Constitutional Authority Statement	19
Applicability to Legislative Branch	19
Statement on Duplication of Federal Programs	19
Disclosure of Directed Rulemaking	20
Section-by-Section Analysis of the Legislation	20
Changes in Existing Law Made by the Bill as Reported	22

AMENDMENTS

The amendments are as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. INCLUSION OF NOTICE OF DISAGREEMENT FORMS IN NOTICES OF DECISIONS OF BENEFITS DENIALS ISSUED BY SECRETARY OF VETERANS AFFAIRS.

- (a) IN GENERAL.—Section 5104(b) of title 38, United States Code, is amended—
- (1) by striking “and (2)” and inserting “(2)”; and
 - (2) by inserting before the period at the end the following: “, and (3) a form that may be used to file a notice of disagreement to the decision”.
- (b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply with respect to decisions made by the Secretary under section 511 of title 38, United States Code, on or after the date of the enactment of this Act.

SEC. 2. PROVISION OF STATUS UNDER LAW BY HONORING CERTAIN MEMBERS OF THE RESERVE COMPONENTS AS VETERANS.

(a) VETERAN STATUS.—

- (1) IN GENERAL.—Chapter 1 of title 38, United States Code, is amended by inserting after section 107 the following new section:

“§ 107A. Honoring as veterans certain persons who performed service in the reserve components

“Any person who is entitled under chapter 1223 of title 10 to retired pay for nonregular service or, but for age, would be entitled under such chapter to retired pay for nonregular service shall be honored as a veteran but shall not be entitled to any benefit by reason of this section.”.

- (2) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 107 the following new item:

“107A. Honoring as veterans certain persons who performed service in the reserve components.”.

(b) CLARIFICATION REGARDING BENEFITS.—No person may receive any benefit under the laws administered by the Secretary of Veterans Affairs solely by reason of section 107A of title 38, United States Code, as added by subsection (a).

SEC. 3. PROVISION OF ACCESS TO CASE-TRACKING INFORMATION.

(a) IN GENERAL.—Chapter 59 of title 38, United States Code, is amended by adding at the end the following:

“§ 5906. Provision of access to case-tracking information

“(a) IN GENERAL.—(1) In accordance with subsection (b), the Secretary shall provide a covered employee with access to the case-tracking system to provide a veteran with information regarding the status of a claim submitted by such veteran if such employee is acting under written permission or a power of attorney executed by such veteran.

“(2) In providing a covered employee with access to the case-tracking system under paragraph (1), the Secretary shall ensure—

“(A) that such access—

“(i) is provided in a manner that does not allow such employee to modify the data contained in such system; and

“(ii) does not include access to medical records; and

“(B) that each time a covered employee accesses such system, the employee must certify that such access is for official purposes only.

“(b) PRIVACY CERTIFICATION COURSE.—The Secretary may not provide a covered employee with access to the case-tracking system under subsection (a)(1) unless the covered employee has successfully completed a certification course on privacy issues provided by the Secretary.

“(c) TREATMENT OF DISCLOSURE.—The access to information by a covered employee pursuant to subsection (a)(1) shall be deemed to be—

“(1) a covered disclosure under section 552a(b) of title 5; and

“(2) a permitted disclosure under regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

“(d) DEFINITIONS.—In this section:

“(1) The term ‘case-tracking system’ means the system of the Department of Veterans Affairs that provides information regarding the status of a claim submitted by a veteran.

“(2) The term ‘covered employee’ means an employee of a State or local governmental agency (including a veterans service officer) who, in the course of car-

rying out the responsibilities of such employment, assists veterans with claims for any benefit under the laws administered by the Secretary.”.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“5906. Provision of access to case-tracking information.”.

SEC. 4. IMPROVEMENT OF FIDUCIARIES FOR VETERANS.

(a) APPOINTMENT AND SUPERVISION.—

(1) Section 5502 of title 38, United States Code, is amended to read as follows:

“§ 5502. Appointment of fiduciaries

“(a) APPOINTMENT.—(1) Where it appears to the Secretary that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Secretary may be made directly to the beneficiary or to a relative or some other fiduciary for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary.

“(2) When in the opinion of the Secretary, a temporary fiduciary is needed in order to protect the benefits provided to the beneficiary under any law administered by the Secretary while a determination of incompetency is being made or appealed or a fiduciary is appealing a determination of misuse, the Secretary may appoint one or more temporary fiduciaries for a period not to exceed 120 days. If a final decision has not been made within 120 days, the Secretary may not continue the appointment of the fiduciary without obtaining a court order for appointment of a guardian, conservator, or other fiduciary under the authority provided in section 5502(b) of this title.

“(b) APPEALS.—(1) If the Secretary determines a beneficiary to be mentally incompetent for purposes of appointing a fiduciary under this chapter, the Secretary shall provide such beneficiary with a written statement detailing the reasons for such determination.

“(2) A beneficiary whom the Secretary has determined to be mentally incompetent for purposes of appointing a fiduciary under this chapter may appeal such determination.

“(c) MODIFICATION.—(1) A beneficiary for whom the Secretary appoints a fiduciary under this chapter may, at any time, request the Secretary to—

“(A) remove the fiduciary so appointed; and

“(B) have a new fiduciary appointed.

“(2) The Secretary shall comply with a request under paragraph (1) if the Secretary determines that the request is made in good faith and—

“(A) the fiduciary requested to be removed receives a fee from the beneficiary and a suitable volunteer fiduciary is available to assist the beneficiary; or

“(B) the beneficiary provides credible information that the fiduciary requested to be removed is—

“(i) not acting in the interest of the beneficiary ;or

“(ii) unable to effectively serve the beneficiary because of an irreconcilable personality conflict or disagreement.

“(3) The Secretary shall ensure that any removal or new appointment of a fiduciary under paragraph (1) does not delay or interrupt the beneficiary’s receipt of benefits administered by the Secretary.

“(d) INDEPENDENCE.—A fiduciary appointed by the Secretary shall operate independently of the Department to determine the actions that are in the interest of the beneficiary.

“(e) PREDESIGNATION.—A veteran may predesignate a fiduciary by—

“(1) submitting written notice to the Secretary of the predesignated fiduciary;

or

“(2) submitting a form provided by the Secretary for such purpose.

“(f) APPOINTMENT OF NON-PREDESIGNATED FIDUCIARY.—If a beneficiary designates an individual to serve as a fiduciary under subsection (e) and the Secretary appoints an individual not so designated as the fiduciary for such beneficiary, the Secretary shall notify such beneficiary of—

“(1) the reason why such designated individual was not appointed; and

“(2) the ability of the beneficiary to modify the appointed fiduciary under subsection (c).

“(g) PRIORITY OF APPOINTMENT.—In appointing a fiduciary under this chapter, if a beneficiary does not designate a fiduciary pursuant to subsection (e), to the extent possible the Secretary shall appoint a person who is—

“(1) a relative of the beneficiary;

“(2) appointed as guardian of the beneficiary by a court of competent jurisdiction; or

“(3) authorized to act on behalf of the beneficiary under a durable power of attorney.”

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of title 38, United States Code, is amended by striking the item relating to section 5502 and inserting the following:

“5502. Appointment of fiduciaries.”.

(b) SUPERVISION.—

(1) IN GENERAL.—Chapter 55 of title 38, United States Code, is amended by inserting after section 5502, as amended by subsection (a)(1), the following new section:

“§ 5502A. Supervision of fiduciaries

“(a) COMMISSION.—(1)(A) In a case in which the Secretary determines that a commission is necessary in order to obtain the services of a fiduciary in the best interests of a beneficiary, the Secretary may authorize a fiduciary appointed by the Secretary to obtain from the monthly benefits provided to the beneficiary a reasonable commission for fiduciary services rendered, but the commission for any month may not exceed the lesser of the following amounts:

“(i) The amount that equals three percent of the monthly monetary benefits under laws administered by the Secretary paid on behalf of the beneficiary to the fiduciary.

“(ii) \$35.

“(B) A commission paid under this paragraph may not be derived from any award to a beneficiary regarding back pay or retroactive benefits payments.

“(C) A commission may not be authorized for a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services for benefits under this title on behalf of the beneficiary.

“(D) In accordance with section 6106 of this title, a commission may not be paid to a fiduciary if the Secretary determines that the fiduciary misused any benefit payments of a beneficiary.

“(E) If the Secretary determines that the fiduciary has misused any benefit or payments of a beneficiary, the Secretary may revoke the fiduciary status of the fiduciary.

“(2) Where, in the opinion of the Secretary, any fiduciary receiving funds on behalf of a Department beneficiary is acting in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the beneficiaries, the Secretary may refuse to make future payments in such cases as the Secretary may deem proper.

“(b) COURT.—Whenever it appears that any fiduciary, in the opinion of the Secretary, is not properly executing or has not properly executed the duties of the trust of such fiduciary or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then the Secretary may appear, by the Secretary’s authorized attorney, in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper presentation of such matters. The Secretary, in the Secretary’s discretion, may suspend payments to any such fiduciary who shall neglect or refuse, after reasonable notice, to render an account to the Secretary from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law. The Secretary may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary). The Secretary may appear or intervene by the Secretary’s duly authorized attorney in any court as an interested party in any litigation instituted by the Secretary or otherwise, directly affecting money paid to such fiduciary under this section.

“(c) PAYMENT OF CERTAIN EXPENSES.—Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment of any fiduciary or other person for the purpose of payment of benefits payable under laws administered by the Secretary or the removal of such fiduciary and appointment of another, and of expenses in connection with the administration of such benefits by such fiduciaries, or in connection with any other court proceeding hereby authorized, when such payment is authorized by the Secretary.

“(d) TEMPORARY PAYMENT OF BENEFITS.—All or any part of any benefits the payment of which is suspended or withheld under this section may, in the discretion of the Secretary, be paid temporarily to the person having custody and control of

the incompetent or minor beneficiary, to be used solely for the benefit of such beneficiary, or, in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is a patient nor apportioned to the veteran's dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Secretary for the benefit of such beneficiary or the beneficiary's dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to the beneficiary if the beneficiary recovers and is found competent, or if a minor, attains majority, or otherwise to the beneficiary's fiduciary, or, in the event of the beneficiary's death, to the beneficiary's personal representative, except as otherwise provided by law; however, payment will not be made to the beneficiary's personal representative if, under the law of the beneficiary's last legal residence, the beneficiary's estate would escheat to the State. In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Secretary deposited before or after August 7, 1959, in the personal funds of patients trust fund on account of such veteran shall not be paid to the personal representative of such veteran, but shall be paid to the following persons living at the time of settlement, and in the order named: The surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts. If any balance remains, such balance shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such balance as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses. No payment shall be made under the two preceding sentences of this subsection unless claim therefor is filed with the Secretary within five years after the death of the veteran, except that, if any person so entitled under said two sentences is under legal disability at the time of death of the veteran, such five-year period of limitation shall run from the termination or removal of the legal disability.

“(e) ESCHEATMENT.—Any funds in the hands of a fiduciary appointed by a State court or the Secretary derived from benefits payable under laws administered by the Secretary, which under the law of the State wherein the beneficiary had last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such fiduciary, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Department, and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.

“(f) ASSISTANCE.—The Secretary shall provide to a fiduciary appointed under section 5502 of this title materials and tools to assist the fiduciary in carrying out the responsibilities of the fiduciary under this chapter, including—

“(1) handbooks, brochures, or other written material that explain the responsibilities of a fiduciary under this chapter;

“(2) tools located on an Internet website, including forms to submit to the Secretary required information; and

“(3) assistance provided by telephone.”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of title 38, United States Code, is amended by inserting after the item relating to section 5502 the following new item:

“5502A. Supervision of fiduciaries.”.

(c) DEFINITION OF FIDUCIARY.—Section 5506 of title 38, United States Code is amended—

(1) by striking “For purposes” and inserting “(a) For purposes”; and

(2) by adding at the end the following new subsection:

“(b)(1) For purposes of subsection (a), the term ‘person’ includes any—

“(A) State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

“(B) any State or local government agency with fiduciary responsibilities; or

“(C) any nonprofit social service agency that the Secretary determines—

“(i) regularly provides services as a fiduciary concurrently to five or more individuals; and

“(ii) is not a creditor of any such individual.

“(2) The Secretary shall maintain a list of State or local agencies and nonprofit social service agencies under paragraph (1) that are qualified to act as a fiduciary under this chapter. In maintaining such list, the Secretary may consult the lists maintained under section 807(h) of the Social Security Act (42 U.S.C. 1007(h)).”.

(d) QUALIFICATIONS.—Section 5507 of title 38, United States Code, is amended to read as follows:

“§ 5507. Inquiry, investigations, and qualification of fiduciaries

“(a) INVESTIGATION.—Any certification of a person for payment of benefits of a beneficiary to that person as such beneficiary’s fiduciary under section 5502 of this title shall be made on the basis of—

“(1) an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary to be conducted in advance of such certification and in accordance with subsection (b);

“(2) adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations);

“(3) adequate evidence that the person to serve as fiduciary protects the private information of a beneficiary in accordance with subsection (d)(1); and

“(4) the furnishing of any bond that may be required by the Secretary in accordance with subsection (f).

“(b) ELEMENTS OF INVESTIGATION.—(1) In conducting an inquiry or investigation of a proposed fiduciary under subsection (a)(1), the Secretary shall conduct—

“(A) a face-to-face interview with the proposed fiduciary by not later than 30 days after the date on which such inquiry or investigation begins; and

“(B) a background check of the proposed fiduciary to—

“(i) in accordance with paragraph (2), determine whether the proposed fiduciary has been convicted of a crime; and

“(ii) determine whether the proposed fiduciary will serve the best interest of the beneficiary, including by conducting a credit check of the proposed fiduciary and checking the records under paragraph (5).

“(2) The Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law. If that person has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary finds that the person is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.

“(3) The Secretary shall conduct the background check described in paragraph (1)(B)—

“(A) each time a person is proposed to be a fiduciary, regardless of whether the person is serving or has served as a fiduciary; and

“(B) at no expense to the beneficiary.

“(4) Each proposed fiduciary shall disclose to the Secretary the number of beneficiaries that the fiduciary acts on behalf of.

“(5) The Secretary shall maintain records of any person who has—

“(A) previously served as a fiduciary; and

“(B) had such fiduciary status revoked by the Secretary.

“(6)(A) If a fiduciary appointed by the Secretary is convicted of a crime described in subparagraph (B), the Secretary shall notify the beneficiary of such conviction by not later than 14 days after the date on which the Secretary learns of such conviction.

“(B) A crime described in this subparagraph is a crime—

“(i) for which the fiduciary is convicted while serving as a fiduciary for any person;

“(ii) that is not included in a report submitted by the fiduciary under section 5509(a) of this title; and

“(iii) that the Secretary determines could affect the ability of the fiduciary to act on behalf of the beneficiary.

“(c) INVESTIGATION OF CERTAIN PERSONS.—(1) In the case of a proposed fiduciary described in paragraph (2), the Secretary, in conducting an inquiry or investigation under subsection (a)(1), may carry out such inquiry or investigation on an expedited basis that may include giving priority to conducting such inquiry or investigation. Any such inquiry or investigation carried out on such an expedited basis shall be carried out under regulations prescribed for purposes of this section.

“(2) Paragraph (1) applies with respect to a proposed fiduciary who is—

“(A) the parent (natural, adopted, or stepparent) of a beneficiary who is a minor;

“(B) the spouse or parent of an incompetent beneficiary;

“(C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction;

“(D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fiduciary does not exceed \$3,600, as adjusted pursuant to section 5312 of this title; or

- “(E) a person who is authorized to act on behalf of the beneficiary under a durable power of attorney.
- “(d) PROTECTION OF PRIVATE INFORMATION.—(1) A fiduciary shall take all reasonable precautions to—
- “(A) protect the private information of a beneficiary, including personally identifiable information; and
- “(B) securely conducts financial transactions.
- “(2) A fiduciary shall notify the Secretary of any action of the fiduciary that compromises or potentially compromises the private information of a beneficiary.
- “(e) POTENTIAL MISUSE OF FUNDS.—(1) If the Secretary has reason to believe that a fiduciary may be misusing all or part of the benefit of a beneficiary, the Secretary shall—
- “(A) conduct a thorough investigation to determine the veracity of such belief; and
- “(B) if such veracity is established, transmit to the officials described in paragraph (2) a report of such investigation.
- “(2) The officials described in this paragraph are the following:
- “(A) The Attorney General.
- “(B) Each head of a Federal department or agency that pays to a fiduciary or other person benefits under any law administered by such department or agency for the use and benefit of a minor, incompetent, or other beneficiary.
- “(f) BOND.—In determining whether a proposed fiduciary is required to furnish a bond under subsection (a)(4), the Secretary shall consider—
- “(1) the existence of any familial or other personal relationship between the proposed fiduciary and the beneficiary; and
- “(2) the care the proposed fiduciary has taken to protect the interests of the beneficiary.
- “(g) LIST OF FIDUCIARIES.—Each regional office of the Veterans Benefits Administration shall maintain a list of the following:
- “(1) The name and contact information of each fiduciary, including address, telephone number, and email address.
- “(2) With respect to each fiduciary described in paragraph (1)—
- “(A) the date of the most recent background check and credit check performed by the Secretary under this section;
- “(B) the date that any bond was paid under this section;
- “(C) the name, address, and telephone number of each beneficiary the fiduciary acts on behalf of; and
- “(D) the amount that the fiduciary controls with respect to each beneficiary described in subparagraph (C).”.
- (e) ANNUAL RECEIPT OF PAYMENTS.—
- (1) IN GENERAL.—Section 5509 of title 38, United States Code, is amended—
- (A) in subsection (a)—
- (i) by striking “may require a fiduciary to file a” and inserting “shall require a fiduciary to file an annual”; and
- (ii) by adding at the end the following new sentence: “The Secretary shall transmit such annual report or accounting to the beneficiary and any legal guardian of such beneficiary.”;
- (B) by adding at the end the following new subsections:
- “(c) MATTERS INCLUDED.—Except as provided by subsection (f), an annual report or accounting under subsection (a) shall include the following:
- “(1) For each beneficiary that a fiduciary acts on behalf of—
- “(A) the amount of the benefits of the beneficiary provided under any law administered by the Secretary accrued during the year, the amount spent, and the amount remaining; and
- “(B) if the fiduciary serves the beneficiary with respect to benefits not administered by the Secretary, an accounting of all sources of benefits or other income the fiduciary oversees for the beneficiary.
- “(2) A list of events that occurred during the year covered by the report that could affect the ability of the fiduciary to act on behalf of the beneficiary, including—
- “(A) the fiduciary being convicted of any crime;
- “(B) the fiduciary declaring bankruptcy; and
- “(C) any judgments entered against the fiduciary.
- “(d) RANDOM AUDITS.—The Secretary shall annually conduct random audits of fiduciaries who receive a commission pursuant to subsection 5502A(a)(1) of this title.
- “(e) STATUS OF FIDUCIARY.—If a fiduciary includes in the annual report events described in subsection (c)(2), the Secretary may take appropriate action to adjust the status of the fiduciary as the Secretary determines appropriate, including by revoking the fiduciary status of the fiduciary.

“(f) CAREGIVERS AND CERTAIN OTHER FIDUCIARIES.—(1)(A) In carrying out this section, the Secretary shall ensure that a caregiver fiduciary is required only to file an annual report or accounting under subsection (a) with respect to the amount of the benefits of the beneficiary provided under any law administered by the Secretary—

“(i) spent on—

“(I) food and housing for the beneficiary; and

“(II) clothing, health-related expenses, recreation, and other personal items for the beneficiary; and

“(ii) saved for the beneficiary.

“(B) The Secretary shall coordinate with the Under Secretary for Benefits and the Under Secretary for Health to—

“(i) minimize the frequency with which employees of the Department visit the home of a caregiver fiduciary and beneficiary; and

“(ii) limit the extent of supervision by such Under Secretaries with respect to such a fiduciary and beneficiary.

“(C) In this paragraph, the term ‘caregiver fiduciary’ means a fiduciary who—

“(i) in addition to acting as a fiduciary for a beneficiary, is approved by the Secretary to be a provider of personal care services for the beneficiary under paragraph (3)(A)(i) of section 1720G(a) of this title;

“(ii) in carrying out such care services to such beneficiary, has undergone not less than four home visits under paragraph (9)(A) of such section; and

“(iii) has not been required by the Secretary to take corrective action pursuant to paragraph (9)(C) of such section.

“(2) In carrying out this section, the Secretary may adjust the matters required under an annual report or accounting under subsection (a) with respect to a fiduciary whom the Secretary determines to have effectively protected the interests of the beneficiary over a sustained period.”; and

(C) by striking the section heading and inserting the following: “**Annual reports and accountings of fiduciaries**”.

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 55 of title 38, United States Code, is amended by striking the item relating to section 5509 and inserting the following new item:

“5509. Annual reports and accountings of fiduciaries.”.

(f) REPAYMENT OF MISUSED BENEFITS.—Section 6107(a)(2)(C) of title 38, United States Code, is amended by inserting before the period the following: “, including by the Secretary not acting in accordance with section 5507 of this title”.

(g) ANNUAL REPORTS.—Section 5510 of title 38, United States Code, is amended by striking “The Secretary shall include in the Annual Benefits Report of the Veterans Benefits Administration or the Secretary’s Annual Performance and Accountability Report” and inserting “Not later than July 1 of each year, the Secretary shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate a separate report containing”.

(h) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committee on Veterans’ Affairs of the Senate and the Committee on Veterans’ Affairs of the House of Representatives a comprehensive report on the implementation of the amendments made by this Act, including—

(1) detailed information on the establishment of new policies and procedures pursuant to such amendments and training provided on such policies and procedures; and

(2) a discussion of whether the Secretary should provide fiduciaries with standardized financial software to simplify reporting requirements.

SEC. 5. LIMITATION ON AWARDS AND BONUSES TO EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS.

For each of fiscal years 2014 through 2018, the Secretary of Veterans Affairs may not pay more than \$345,000,000 in awards or bonuses under chapter 45 or 53 of title 5, United States Code, or any other awards or bonuses authorized under such title.

Amend the title to read:

A bill to amend title 38, United States Code, to require the Secretary of Veterans Affairs to include a notice of disagreement form in any notice of decision issued for the denial of a benefit sought, to improve the supervision of fiduciaries of veterans under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

PURPOSE AND SUMMARY

H.R. 1405 was introduced on March 25, 2013, by Representative Dina Titus of Nevada. H.R. 1405, as amended, incorporates provisions from H.R. 679, introduced by Representative Timothy J. Walz of Minnesota, H.R. 733, introduced by Representative Jon Runyan of New Jersey; and H.R. 894, as amended, introduced by Representative Bill Johnson of Ohio. Together, these provisions would require the inclusion of a Notice of Disagreement Form within notices of decisions of benefits denials issued by Department of Veterans Affairs (VA); honor America's Guard-Reserve retirees; increase accessibility to case-tracking information on pending claims; and improve fiduciary services for veterans. H.R. 1405, as amended, also makes reasonable modifications to the overall amount of bonuses at VA.

BACKGROUND AND NEED FOR LEGISLATION

SECTION 1—INCLUSION OF NOTICE OF DISAGREEMENT FORMS IN NOTICES OF DECISIONS OF BENEFITS DENIALS ISSUED BY SECRETARY OF VETERANS AFFAIRS

Currently, section 5104 of title 38, United States Code, states that the Secretary must notify a claimant of any benefits decision made and, in cases where the Secretary denies the benefit sought, the claimant must also be notified of the reasons for the decision and a summary of the evidence that was considered. This provision would amend this section to also require the Secretary to provide a specific Notice of Disagreement form along with any notice of decision issued for the denial of a benefit sought.

Although VA provides veterans with specific forms for most filings related to benefits claims, there is currently no specific form provided for filing a Notice of Disagreement, the document that initiates the process by which a claimant may appeal an adverse benefits decision. Pursuant to section 7105 of title 38, United States Code, any form may be used to file a Notice of Disagreement, so long as it is in writing and expresses disagreement with the rating decision that was issued. Due to this leniency, it is sometimes unclear to raters processing a claim when a veteran is expressing disagreement with a decision. This may ultimately lead to unnecessary delays in review and resolution of the veteran's claim. Accordingly, Section 1 of H.R. 1405, as amended, requires VA to provide a specific form that will assist the veteran in clarifying intent when it comes to appealing an adverse benefits decision.

SECTION 2—PROVISION OF STATUS UNDER LAW BY HONORING CERTAIN MEMBERS OF THE RESERVE COMPONENTS AS VETERANS

Section 2 of H.R. 1405, as amended, is derived from H.R. 679, introduced by Representative Timothy J. Walz of Minnesota. The National Guard and Reserve Component of the United States Armed Forces perform an invaluable role and are an important part of our overall force structure. They support the active duty component of the United States military by responding in times of national emergency, ready to be called to active-duty service in times of need.

Section 101(2) of title 38, United States Code, defines a "veteran" as "a person who served in the active military, naval, or air service,

and who was discharged or released therefrom under conditions other than dishonorable.” Generally, persons not meeting that definition are ineligible for the full range of rights and benefits extended under the law.

Speaking on behalf of Section 2 of H.R. 1405, as amended, Representative Walz commented that the failure to recognize those who have served 20 or more years in the Reserve and National Guard as “veterans” is not right. National Guard and Reserve members who completed 20 or more years of service wore the same uniform as active-duty servicemembers, were subject to the same code of military justice, received the same training, and were available for call-up to active-duty service at any time. Representative Walz noted that having someone who served in uniform for 20 years feel badly about referring to themselves as a veteran is simply wrong.

Section 2 of H.R. 1405, as amended, would confer honorary veteran status on those individuals who are entitled under chapter 1223 of title 10, United States Code, to retired pay for nonregular service or who would be entitled to retired pay, but for age. Further, section 2 of H.R. 1405, as amended, would ensure that those who receive the honorary recognition as “veteran” conferred in the bill would not be entitled to any benefit under the laws administered by the Secretary of Veterans Affairs solely by reason of such recognition.

SECTION 3—PROVISION OF ACCESS TO CASE-TRACKING INFORMATION

Section 3 of H.R. 1405, as amended, is derived from H.R. 733, originally introduced by Representative Jon Runyan of New Jersey. This section would allow certain State or local government employees to access read-only information regarding the status of pending claims. Privacy concerns would be addressed through requirement of the veteran’s written permission or power of attorney, through an employee’s certification upon each access, and through required VA privacy training.

The need for this legislation has been raised several times by County Veteran Service Officers (CVSOs). One of the main issues repeatedly presented is the lack of access to claims file information, which impedes CVSOs’ ability to answer veterans’ questions about their claims. Although many veterans use a nationally chartered veteran service organization (VSO) as their Power of Attorney (POA) during the claims process, this contact is often unable to timely respond to veterans’ status requests due to workload constraints. Therefore, this legislation aims to provide such access, which should assist in preventing veterans from filing duplicate claims and overburdening VA.

SECTION 4—IMPROVEMENT OF FIDUCIARIES FOR VETERANS

Section 4 of H.R. 1405, as amended, is derived from H.R. 894, originally introduced by Representative Bill Johnson of Ohio, and provides reforms to the VA’s fiduciary program. Specifically, chapter 55 of title 38, United States Code, provides authority for the VA Fiduciary Program, which is intended to help veterans and other VA beneficiaries who are deemed by the Secretary of Veterans Affairs to be mentally incompetent for purposes of handling their financial affairs. In such cases, the Secretary appoints a fiduciary

who, by statute, is only authorized to receive and manage benefits administered by the Secretary on behalf of the beneficiary. The fiduciary is responsible for ensuring that a beneficiary's bills are paid on time and that a beneficiary receives money to pay for food, shelter, clothing, medical expenses, and other necessities.

The framework established in chapter 55 allows the Department a great deal of latitude in implementing the Fiduciary Program. Section 4 of H.R. 1405, as amended, is designed to transform the VA's Fiduciary Program to better serve the needs of our most vulnerable veterans and their hardworking fiduciaries, and to protect veterans in the program from falling victim to deceitful and criminal fiduciaries. Section 4 of H.R. 1405, as amended, overhauls the VA Fiduciary Program, making many necessary reforms to address problems identified in recent years and realigns chapter 55 to a structure more consistent with other amended sections of title 38.

Section 4 of H.R. 1405, as amended, provides the Secretary with authority to appoint a temporary fiduciary, if one is needed to protect the benefits of a VA beneficiary while a determination of incompetency is being made or appealed or a fiduciary is appealing a determination of misuse. The Secretary would be able to appoint temporary fiduciaries for up to 120 days. Under current law, a VA beneficiary who is appointed a fiduciary has the right to appeal the decision. However, the appeals process within VA's Fiduciary Program is difficult, slow, and often results in healthy, capable veterans being unable to remove themselves from the program. Section 4 of H.R. 1405, as amended, would require the Secretary to provide a written statement to a beneficiary determined to be mentally incompetent for purposes of appointing a fiduciary, which would detail the reasons for such determination, and would allow a veteran to appeal the finding of incompetence at any time. This provision not only enables a veteran to remain out of the fiduciary program if medical evidence supports such a position, it also allows a veteran who has sufficiently recovered at a later time to return to managing his or her own financial affairs.

Section 4 of H.R. 1405, as amended, would also allow a veteran to request the appointment of a new fiduciary if it is perceived that the current fiduciary is not acting in the best interest of the veteran or has an irreconcilable personality conflict or disagreement. The Secretary may deny the removal of an appointed fiduciary if it is determined that the request was not made in good faith, and shall ensure that the delivery of benefits is not interrupted if a previous fiduciary is removed and a new one appointed.

Section 4 of H.R. 1405, as amended, would enable a veteran to designate a preferred fiduciary ahead of time, such as a family member or guardian. While the Secretary would not be required to appoint the designated fiduciary, the reason for not appointing that fiduciary would have to be presented in writing to the veteran as would a notice of the veteran's right to modify the appointment. In many cases, a veteran may already have a family member or court-appointed guardian acting as a fiduciary for other benefits, and in cases where the veteran was happy with the fiduciary's performance of those duties, a sensible approach would be to maintain that relationship.

Under certain circumstances, the Secretary may decide that a paid fiduciary is in a veteran's best interest. Section 5502(a)(2) of

title 38, United States Code, states that a fiduciary may receive a commission for his or her efforts, but that commission may not exceed four percent of the monetary benefits a beneficiary receives in one year. Investigations, hearings, and media reports identified many problems in the Fiduciary Program arising from paid fiduciaries receiving more than the amount authorized under law, including receiving commissions from retroactive and lump sum payments to veterans. Further, evidence also revealed VA field examiners directing fiduciaries to take income from non-VA benefits as well, an action explicitly not authorized in law. In many of these instances, the veteran beneficiary still did not receive basic funding for food, clothing, and shelter that should have been administered by the fiduciary.

Hearings and investigations have indicated that current law and policy regarding commissions paid to fiduciaries are frequently violated throughout the nation; additionally, the commission rate paid to VA-appointed fiduciaries is already higher than that paid by the Social Security Administration (SSA) under the Representative Payee Program, the SSA's equivalent to VA's Fiduciary Program. In comparison to the approximately 120,000 beneficiaries under VA's Fiduciary Program, the Social Security Representative Payee Program deals with approximately 7.8 million beneficiaries.

Section 4 of H.R. 1405, as amended, reduces the commission rate paid to fiduciaries, if the Secretary determines that a paid fiduciary is in the best interest of the veteran, to not more than 3% of the veteran's monthly benefits, or \$35 per month, whichever is less. Any desire by VA to increase this rate would require congressional authorization. This commission rate would give VA's Fiduciary Program a similar structure to the SSA's Representative Payee Program and will reduce the profit motive of predatory fiduciaries. The section also clarifies that commission payments are not to be derived from retroactive or lump sum payments; that fiduciaries who are determined to misuse a veteran's benefits may not receive commissions; that fiduciaries found to be misusing funds may have their status as fiduciaries revoked; that the Secretary may seek compensation in a court of law from fiduciaries found to misuse benefits or fiduciaries who fail to adequately account for a veteran's benefits; and that funds remaining with a paid fiduciary after a veteran's passing shall escheat to the federal government. Reducing the financial incentive for a predatory fiduciary to apply to VA's Fiduciary Program provides further assurance that participants are working in the best interest of vulnerable veterans.

During past investigations and hearings, concerns arose regarding the qualifications of fiduciaries. Documented cases existed of convicted felons serving as fiduciaries as well as fiduciaries with no knowledge of or training regarding their duties to the veteran. Many cases of embezzlement of a veteran's funds could have been prevented with a basic background check of a fiduciary, but VA frequently used its authority to waive the current background check requirement for appointment of a fiduciary, and failed to follow up at a later point in time to determine the suitability of the appointed fiduciary.

Section 4 of H.R. 1405, as amended, improves the qualification process for fiduciaries as well as oversight of fiduciaries already appointed by requiring the Secretary to perform civil and criminal

background investigations and a face-to-face interview prior to certifying an individual as a fiduciary. To address concerns that performing background checks may slow the fiduciary appointment process, authority is provided to the Secretary to expedite background checks where necessary. This section would also protect veterans' sensitive personal information and would require the furnishing of a bond when required by the Secretary before certifying an individual as a fiduciary. Concerns were raised by veterans service organizations that the requirement of a bond for family or caregiver fiduciaries causes undue hardship upon those closest to the veteran; to address these concerns, Section 4 of H.R. 1405, as amended, would allow the Secretary to consider the existence of a familial or personal relationship between the proposed fiduciary and beneficiary, as well as the care the proposed fiduciary has taken to protect the interests of the beneficiary.

Many documented cases also exist where a veteran had never met nor heard from his or her fiduciary, in addition to cases where VA experienced difficulty contacting fiduciaries it had appointed. This lack of accountability on the part of fiduciaries, coupled with VA's lack of oversight, contributed to veterans not receiving the necessary funds to pay basic utilities and predatory fiduciaries making a profit at the expense of the veteran. To address this, Section 4 of H.R. 1405, as amended, contains a provision that would require an annual accounting by fiduciaries that will consist of benefits earned, benefits disbursed, and the remaining balance as well as other sources of income for that veteran that the fiduciary controls. The fiduciary must also report any events affecting his or her ability to serve the veteran including criminal convictions, bankruptcy filings, and judgments filed against the fiduciary, and any events reported in the annual accounting may be considered by the Secretary in determining a fiduciary's ability to serve the best interest of the veteran. The annual report would be transmitted to the veteran beneficiary or guardian.

Section 4 of H.R. 1405, as amended, also provides for specific treatment of caregiver fiduciaries, ensuring that a limited annual report is required. The Secretary is given discretion to adjust the matters required under an annual report or accounting with respect to a caregiver fiduciary whom the Secretary determines to have effectively protected the interests of the beneficiary over a sustained period, including the parameters for the posting of bond as mentioned above. Additionally, the Veterans Benefits Administration and the Veterans Health Administration are required to coordinate and minimize the frequency with which employees of the Department visit the home of a caregiver fiduciary and beneficiary and limit the extent of supervision by such Under Secretaries with respect to such a fiduciary and beneficiary.

SECTION 5—LIMITATION ON AWARDS AND BONUSES TO EMPLOYEES OF DEPARTMENT OF VETERANS AFFAIRS

Section 5 of H.R. 1405, as amended, places a limit on total funds permitted to be used towards VA performance awards or bonuses for the next five fiscal years. VA currently disburses an annual average of approximately \$400,000,000 in bonuses, awards, and other incentives. These incentives include Group Cash Awards, Travel Savings Incentives, Individual Cash Awards (Not Rating Based),

Presidential Rank Awards, SES Performance Awards, Individual Cash Awards (Rating Based), Individual Suggestion/Invention Awards, Group Suggestion/Invention Awards, Foreign Language Awards, Group Awards—Other, Specialty Certification Awards, Exemplary Job Performance/Achievement Awards, Lump Sum Performance Payments (Rating Based—In Lieu of Pay Adjustment), Lump Sum Performance Payments (Rating Based Not in Lieu of Pay Adjustment), Lump Sum Performance Payments (Not Rating Based), Retention Incentives, Recruitment Incentives, and Relocation Incentives. In addition, VA also awards Individual Time Off Awards—Hours and Group Time Off Awards—Hours, which are not readily quantified into dollar amounts.

The Office of Personnel Management (OPM) issues a guide to federal agencies for processing these awards, many of which are covered under title 5, United States Code. Further policy for awarding bonuses and other incentives is established by VA's Office of Human Resources Management. This policy is then executed at multiple levels throughout VA all the way down to facility directors.

In a November 14, 2011, report titled "Audit of Retention Incentives for Veterans Health Administration and VA Central Office Employees," (VAOIG 10-02887-30) VA's Office of Inspector General (VAOIG) identified that approving officials within both the Department of Veterans Affairs Central Office (VACO) and the Veterans Health Administration (VHA) did not adequately justify retention incentive awards. In the awards reviewed, VAOIG also consistently identified missing support documentation to accompany the award. More recently, concerns have been raised regarding VA's provision of merit-based bonuses to managers and supervisors who have led troubled offices, including Veterans Health Administration medical centers with demonstrated incidences of gross negligence in care, and VBA positions where a growing inventory of claims and poor workload management practices abound.

The VAOIG's findings were consistent with the Committee's findings of bonuses being awarded to employees with less than satisfactory performance and retention incentives being awarded to employees who had stated their intention to retire in the very near future. The proposed reduction under section 5 of the bill, which does not include additional time off awards, would leave sufficient funding for VA to award suitable bonuses and other incentives to deserving employees.

HEARINGS

On April 16, 2013, the Subcommittee on Disability Assistance and Memorial Affairs conducted a legislative hearing on various bills introduced during the 113th Congress, including H.R. 679 (from which section 2 of H.R. 1405, as amended, is derived), H.R. 733 (from which section 3 of H.R. 1405, as amended, is derived), H.R. 894 (from which section 4 of H.R. 1405, as amended, is derived), and H.R. 1405. The following witnesses testified:

The Honorable Bill Johnson, U.S. House of Representatives; The Honorable Chellie Pingree, U.S. House of Representatives; The Honorable Timothy J. Walz, U.S. House of Representatives; Mr. Jeff Hall, Assistant National Legislative Director, Disabled American Veterans; Mr. Raymond Kelley, Director of National Legisla-

tive Service, Veterans of Foreign Wars; Colonel Robert F. Norton, USA (Ret.), Deputy Director of Government Relations, Military Officers Association of America; Heather Ansley, Esq., MSW, Vice President of Veterans Policy, VetsFirst, a program of United Spinal Association; Mr. Michael D. Murphy, Executive Director, National Association of County Veterans Service Officers; Mr. Richard Hipolit, Assistant General Counsel, U.S. Department of Veterans Affairs; Mr. David R. McLenachen, Director, Pension and Fiduciary Service, U.S. Department of Veterans Affairs, accompanied by Ms. Mary Ann Flynn, Deputy Director, Policy and Procedures, Compensation Service, U.S. Department of Veterans Affairs. The following groups submitted statements for the record: The American Legion; Iraq and Afghanistan Veterans of America; National Organization of Veterans Advocates; and Wounded Warrior Project.

SUBCOMMITTEE CONSIDERATION

On April 25, 2013, the Subcommittee on Disability Assistance and Memorial Affairs met in an open markup session, a quorum being present, and favorably forwarded to the full Committee H.R. 894 and H.R. 1405, as amended, by voice vote.

During consideration of H.R. 1405, the following amendment was considered:

An amendment in the nature of a substitute offered by Ms. Titus of Nevada that modified the original text to clarify that the standardized appeal form included in the mailing is to be a Notice of Disagreement, and that incorporated amended provisions from H.R. 679 and H.R. 733, to limit case-tracking information access by requiring written permission or power of attorney, as well as limiting access to employees of a State or local governmental agency was agreed to by voice vote.

COMMITTEE CONSIDERATION

On May 8, 2013, the full Committee met in an open markup session, a quorum being present, and ordered H.R. 1405 reported favorably to the House of Representatives by voice vote.

During consideration of H.R. 1405 the following amendment was considered: An amendment in the nature of a substitute offered by Ms. Titus of Nevada that incorporated provisions of H.R. 894, originally offered by Representative Bill Johnson of Ohio, with amendment to clarify a veteran's ability to request the appointment of a new fiduciary, and to provide certain considerations to caregiver fiduciaries, was agreed to by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report the legislation and amendments thereto. There were no recorded votes taken on amendments or in connection with ordering H.R. 1405, as amended, reported to the House. A motion by Ranking Member Michael H. Michaud of Maine to report H.R. 1405, as amended, favorably to the House of Representatives was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII and clause (2)(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In accordance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 1405, as amended, does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate on H.R. 1405, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate for H.R. 1405, as amended, provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 15, 2013.

Hon. JEFF MILLER,
*Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1405, a bill to amend title 38, United States Code, to require the Secretary of Veterans Affairs to include a notice of disagreement form in any notice of decision issued for the denial of a benefit sought, to improve the supervision of fiduciaries of veterans under laws administered by the Secretary of Veterans Affairs, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Dwayne M. Wright.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 1405—A bill to amend title 38, United States Code, to require the Secretary of Veterans Affairs to include a notice of disagreement form in any notice of decision issued for the denial of a benefit sought, to improve the supervision of fiduciaries of veterans under laws administered by the Secretary of Veterans Affairs, and for other purposes

Summary: H.R. 1405 would make changes to certain administrative procedures and programs of the Department of Veterans Affairs (VA), including the fiduciary program, access to case-tracking information, and limits on bonuses for employees. CBO estimates that implementing H.R. 1405 would yield net discretionary savings of \$108 million over the 2014–2018 period, assuming appropriation actions consistent with the bill.

Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

H.R. 1405 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1405 is shown in the following table. The costs of this legislation fall within budget function 700 (veterans benefits and services).

	By fiscal year, in millions of dollars—					
	2014	2015	2016	2017	2018	2014–2018
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Limit on Awards and Bonuses to VA Employees:						
Estimated Authorization Level	–54	–58	–62	–66	–70	–310
Estimated Outlays	–54	–58	–62	–66	–70	–310
Improvement of Fiduciary Program for Veterans:						
Estimated Authorization Level	19	38	39	40	40	176
Estimated Outlays	19	38	39	40	40	176
Provision of Access to Case-Tracking System:						
Estimated Authorization Level	6	5	5	5	5	26
Estimated Outlays	6	5	5	5	5	26
Total Changes:						
Estimated Authorization Level	–29	–15	–18	–21	–25	–108
Estimated Outlays	–29	–15	–18	–21	–25	–108

Note: VA = Department of Veterans Affairs.

Basis of estimate:

Limit on awards and bonuses to VA employees

Section 5 would limit the amount that VA could pay in awards and bonuses to VA employees to \$345 million per year over the 2014–2018 period.

For 2013, the amount of allowable payments was capped at \$395 million. Assuming such payments will increase from that level at historical rates of growth, CBO estimates that implementing section 5 would reduce spending for pay and performance by \$310 million over the 2014–2018 period, assuming appropriation actions consistent with the bill.

Improvement of fiduciary program for veterans

Section 4 would make significant changes to VA's fiduciary program. That program provides or approves fiduciaries for veterans who cannot manage their financial affairs. The fiduciaries receive and manage the veterans' benefits on their behalf. The provision would require VA to:

- Determine the competency of individuals appointed as fiduciaries;
- Remove certain fiduciaries deemed incompetent and review the files of fiduciaries appealing such decisions;
- Maintain a list of state, local, or nonprofit agencies that could perform fiduciary duties;
- Update the qualifications and procedures for certifying a fiduciary to include: visits to proposed fiduciaries, Internet training, and criminal background and credit checks;
- Require that all fiduciaries provide pertinent accounting details for VA verification; and
- Notify veterans if a requested fiduciary is unqualified and why, and provide veterans with a notice of certified fiduciaries.

Section 4 also would require VA to maintain a database of all fiduciaries and to submit a report to the Congress on the progress of the program.

Based on information from VA, CBO estimates that about 460 additional employees would need to be hired to carry out the requirements of section 4 at an average annual cost of about \$80,000 per employee in 2014 and increasing thereafter with inflation. We also estimate that the information technology systems necessary to maintain the database would cost about \$1 million per year. In total, CBO estimates that implementing section 4 would cost \$176 million over the 2014–2018 period, assuming appropriation of the necessary amounts.

Provision of access to case-tracking system

Section 3 would require VA to provide certain individuals, referred to as covered employees, access to VA's case-tracking system in order to provide veterans with information regarding the status of claims submitted to VA. Covered employees under section 3 would include Members of the Congress and their staff and certain employees of state and local agencies who assist veterans with claims for benefits.

This access would be limited so that covered employees would not be able to alter any information in the system or have access to any medical records. Covered employees also would be required to complete a certification course on privacy issues that would be provided by VA.

CBO expects that about 8,000 Congressional, state, and local employees would take training courses each year and be granted access at a cost of about \$600 per employee. VA also would need to modify their system to ensure limited access. CBO estimates that implementing section 3 would increase spending for information technology by \$26 million over the 2014–2018 period, assuming appropriation of the necessary amounts.

Notice of disagreement

Section 1 would require VA to include a form that could be used to file a notice of disagreement when a claimant's application for benefits is denied. Under current law, when an application for benefits is denied, the claimant is provided with a written notice of the decision, a statement of the reasons for the denial, and a summary of evidence used to support the denial. CBO estimates that including an additional form with that notification would have an insignificant cost.

Intergovernmental and private-sector impact: H.R. 1405 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Dwayne M. Wright; Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum; Impact on the Private Sector: Elizabeth Bass.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates regarding H.R. 1405, as amended, prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act would be created by H.R. 1405, as amended.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to Article I, section 8 of the United States Constitution, the reported bill is authorized by Congress' power to "provide for the common Defense and general Welfare of the United States."

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

STATEMENT ON DUPLICATION OF FEDERAL PROGRAMS

Pursuant to section 3(j) of H. Res. 5, 113th Cong. (2013), the Committee finds that no provision of H.R. 1405, as amended, establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(k) of H. Res. 5, 113th Cong. (2013), the Committee estimates that H.R. 1405, as amended, does not require any directed rule makings.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1—Inclusion of Notice of Disagreement Forms in Notices of Decisions of Benefits Denials Issued by Secretary of Veterans Affairs

Section 1(a) would require VA to provide claimants with a standardized form to appeal adverse benefits decisions in the form of a Notice of Disagreement.

Section 1(b) would set an effective date, which makes this section effective to VA decisions on or after date of enactment of this Act.

Section 2—Provision of status under law by honoring certain members of the reserve components as veterans

Section 2(a) would honor as a veteran any person entitled to retired pay for nonregular service or who would be entitled to retired pay, but for age, would be so entitled.

Section 2(b) would clarify that no VA benefits attach to any individual solely by the individual's recognition as "veteran" under this Act.

Section 3—Provision of access to case-tracking information

Section 3(a) would add a new section, 5906, to chapter 59 of title 38, United States Code, to provide certain covered employees, to include certain State or local governmental agency employees, with access to case-tracking information from the Veterans Benefits Administration, and would require covered employees certify that each access is for official purposes only. The covered employee would not have access to certain private records such as medical records and would not be able to modify data in the system. This section would require the covered employees to complete a required privacy certification course, would provide that the case-tracking access is a permitted disclosure under the Health Insurance Portability and Accountability Act of 1996, and would provide necessary defined terms.

Section 4—Improvement of fiduciaries for veterans

Section 4(a) would amend section 5502 of chapter 55 of title 38, United State Code, to revise the process for appointment of fiduciaries. Section 4(a) would allow for the appointment of a fiduciary, including a temporary fiduciary for a period not to exceed 120 days. Section 4(a) would require VA to provide a written statement to the veteran detailing the reasons for the appointment of a fiduciary and implement an appeals process which would allow a veteran to challenge the finding of mental incompetence. It would also allow a veteran to request the modification of an appointed fiduciary. Section 4(a) would establish that a fiduciary operates independently of VA to act in the best interest of the beneficiary, would allow predesignation of a fiduciary, and would require the Secretary to provide a veteran notice as to why a different fiduciary, rather than the predesignated fiduciary, was appointed for the vet-

eran beneficiary, and would require notice of ability to modify the appointment. Section 4(a) would also set a priority of appointment of fiduciary, to include relatives, court appointed guardian, or individual holding a power of attorney.

Section 4(b) would amend chapter 55 of title 38, United States Code, by adding a new section 5502A, which would decrease the commission appointed fiduciaries may receive. The rate would be set at the lesser of either 3% of monthly benefits or \$35. It would also allow VA attorneys to appear in a court of appropriate jurisdiction against any fiduciary who has failed to execute the duties of a VA appointed fiduciary. Section 4(b) would permit VA to temporarily make payments to the person or institution having custody and control of an incompetent or minor beneficiary. Upon the death of a beneficiary, section 4(b) would direct fiduciaries to pay all remaining funds overseen by fiduciaries to any surviving spouse, or in equal parts to any children, or in equal parts to any dependent parents. It would also require that if a beneficiary did not have a spouse, children, or dependent parents, and lived in a state where the beneficiary's assets would escheat to the state, any funds derived from VA benefits would then escheat to the United States. Section 4(b) would also require the Secretary to provide a fiduciary with tools such as written materials and Internet materials.

Section 4(c) would amend section 5506 of chapter 55 of title 38, United States Code, to require VA to expand the definition of a person eligible to serve as a fiduciary to include state and local government agencies and nonprofits, and compel VA to maintain a list of state or local agencies and nonprofit social agencies who qualify to act as a fiduciary.

Section 4(d) would amend section 5507 of chapter 55 of title 38, United States Code, to mandate that VA investigate each fiduciary before an appointment and allow VA to expedite the investigation for certain proposed fiduciaries. The investigation would include a face-to-face interview no more than 30 days after the investigation begins and a background check which would include a criminal background check and a credit check. The background check would be performed each time a person is proposed as a fiduciary. It would also require VA to notify the beneficiary if a fiduciary is convicted of certain crimes. This part would also require VA to maintain records of any person who previously served as a fiduciary and any fiduciary whose status was revoked and would require each regional office to maintain a list with the name and contact information of each fiduciary and include pertinent information related to each fiduciary's background investigation, bond payment, and the amount the fiduciary controls for each beneficiary served. Section 4(d) would require the Secretary to consider the fiduciary's relationship to the beneficiary, such as familial or personal relationships when determining bond.

Section 4(d) would also require VA to investigate alleged misuse of benefits, and, if substantiated, to transmit the results of the investigation to the Attorney General and each head of a federal department or agency that pays benefits to fiduciaries or beneficiaries. It would also require VA to ensure that any bond furnished by a fiduciary was not paid using funds from the beneficiary and to consider the care a proposed fiduciary has taken to protect the interests of the beneficiary while also considering the capacity

of the proposed fiduciary to meet the financial requirements of the bond.

Section 4(e) would amend section 5509 of chapter 55 of title 38, United States Code, to require fiduciaries to file an annual report to include the amount of benefits the beneficiary accrued during the year, if the fiduciary serves the beneficiary for non-VA benefits, an accounting of all other sources of income the fiduciary oversees for the beneficiary, and whether the fiduciary was convicted of any crime, filed bankruptcy, and any judgments entered against the fiduciary. It would require VA to perform random audits of fiduciaries who receive a commission. Section 4(e) would also require the Under Secretary of Benefits and the Under Secretary for Health to promulgate regulations that would not diminish the ability of fiduciaries providing care under chapter 17, title 38, United States Code, to care for beneficiaries.

Section 4(f) would amend section 6107 of chapter 61 of title 38, United States Code, to amend provision for repayment of misused benefits. Specifically, section 4(f) would provide that the Secretary's failure to act in accordance with section 5507 would constitute negligent failure under section 6107.

Section 4(g) would amend VA annual reporting requirements, and would require the Secretary to submit a separate report on fiduciaries not later than July 1 of each year to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives.

Section 4(h) would require VA to provide, within one year of enactment, a report to the Committee on Veterans' Affairs of the Senate and the Committee on Veterans' Affairs of the House of Representatives on the implementation of the new policies and a discussion on whether VA should offer fiduciaries standardized financial software to comply with reporting requirements.

Section 5—Limitation on awards and bonuses to employees of Department of Veterans Affairs

Section 13 would require VA to limit the total amount paid in performance awards or bonuses for each of fiscal years 2014 through 2018 to \$345,000,000.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 38, UNITED STATES CODE

* * * * *

PART I—GENERAL PROVISIONS

* * * * *

CHAPTER 1—GENERAL

Sec.

101. Definitions.

* * * * *

107A. *Honoring as veterans certain persons who performed service in the reserve components.*

* * * * *

§ 107A. Honoring as veterans certain persons who performed service in the reserve components

Any person who is entitled under chapter 1223 of title 10 to retired pay for nonregular service or, but for age, would be entitled under such chapter to retired pay for nonregular service shall be honored as a veteran but shall not be entitled to any benefit by reason of this section.

* * * * *

PART IV—GENERAL ADMINISTRATIVE PROVISIONS

* * * * *

CHAPTER 51—CLAIMS, EFFECTIVE DATES, AND PAYMENTS

SUBCHAPTER I—CLAIMS

* * * * *

§ 5104. Decisions and notices of decisions

(a) * * *

(b) In any case where the Secretary denies a benefit sought, the notice required by subsection (a) shall also include (1) a statement of the reasons for the decision, [and (2)] (2) a summary of the evidence considered by the Secretary, and (3) a form that may be used to file a notice of disagreement to the decision.

* * * * *

CHAPTER 55—MINORS, INCOMPETENTS, AND OTHER WARDS

Sec.

5501. Commitment actions.

[5502. Payments to and supervision of fiduciaries.]

5502. *Appointment of fiduciaries.*

5502A. *Supervision of fiduciaries.*

* * * * *

[5509. Authority to require fiduciary to receive payments at regional offices of the Department when failing to provide required accounting.]

5509. *Annual reports and accountings of fiduciaries.*

* * * * *

* * * * *

§ 5502. Payments to and supervision of fiduciaries

[(a)(1) Where it appears to the Secretary that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Secretary may be made directly to the beneficiary or to a relative or some other fiduciary for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary. Where, in the opinion of the Secretary, any fiduciary receiving funds on behalf of a Department beneficiary is acting in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the beneficiaries, the Secretary may refuse to make future payments in such cases as the Secretary may deem proper.]

[(2) In a case in which the Secretary determines that a commission is necessary in order to obtain the services of a fiduciary in the best interests of a beneficiary, the Secretary may authorize a fiduciary appointed by the Secretary to obtain from the beneficiary's estate a reasonable commission for fiduciary services rendered, but the commission for any year may not exceed 4 percent of the monetary benefits under laws administered by the Secretary paid on behalf of the beneficiary to the fiduciary during such year. A commission may not be authorized for a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services for benefits under this title on behalf of the beneficiary.]

[(b) Whenever it appears that any fiduciary, in the opinion of the Secretary, is not properly executing or has not properly executed the duties of the trust of such fiduciary or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then the Secretary may appear, by the Secretary's authorized attorney, in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper presentation of such matters. The Secretary, in the Secretary's discretion, may suspend payments to any such fiduciary who shall neglect or refuse, after reasonable notice, to render an account to the Secretary from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law. The Secretary may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary). The Secretary may appear or intervene by the Secretary's duly authorized attorney in any court as an interested party in any litigation instituted by the Secretary or otherwise, directly affecting money paid to such fiduciary under this section.]

[(c) Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment of any fiduciary or other person for the purpose of payment of benefits payable under laws administered by the Secretary or the removal of such fiduciary and appointment of another, and of expenses in connection with the administration of such benefits by such fiduciaries, or in connection with any other

court proceeding hereby authorized, when such payment is authorized by the Secretary.

[(d) All or any part of any benefits the payment of which is suspended or withheld under this section may, in the discretion of the Secretary, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary, to be used solely for the benefit of such beneficiary, or, in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is a patient nor apportioned to the veteran's dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Secretary for the benefit of such beneficiary or the beneficiary's dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to the beneficiary if the beneficiary recovers and is found competent, or if a minor, attains majority, or otherwise to the beneficiary's fiduciary, or, in the event of the beneficiary's death, to the beneficiary's personal representative, except as otherwise provided by law; however, payment will not be made to the beneficiary's personal representative if, under the law of the beneficiary's last legal residence, the beneficiary's estate would escheat to the State. In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Secretary deposited before or after August 7, 1959, in the personal funds of patients trust fund on account of such veteran shall not be paid to the personal representative of such veteran, but shall be paid to the following persons living at the time of settlement, and in the order named: The surviving spouse, the children (without regard to age or marital status) in equal parts, and the dependent parents of such veteran, in equal parts. If any balance remains, such balance shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such balance as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses. No payment shall be made under the two preceding sentences of this subsection unless claim therefor is filed with the Secretary within five years after the death of the veteran, except that, if any person so entitled under said two sentences is under legal disability at the time of death of the veteran, such five-year period of limitation shall run from the termination or removal of the legal disability.]

[(e) Any funds in the hands of a fiduciary appointed by a State court or the Secretary derived from benefits payable under laws administered by the Secretary, which under the law of the State wherein the beneficiary had last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such fiduciary, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Department, and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.]

§5502. Appointment of fiduciaries

(a) *APPOINTMENT.*—(1) *Where it appears to the Secretary that the interest of the beneficiary would be served thereby, payment of benefits under any law administered by the Secretary may be made directly to the beneficiary or to a relative or some other fiduciary for the use and benefit of the beneficiary, regardless of any legal disability on the part of the beneficiary.*

(2) *When in the opinion of the Secretary, a temporary fiduciary is needed in order to protect the benefits provided to the beneficiary under any law administered by the Secretary while a determination of incompetency is being made or appealed or a fiduciary is appealing a determination of misuse, the Secretary may appoint one or more temporary fiduciaries for a period not to exceed 120 days. If a final decision has not been made within 120 days, the Secretary may not continue the appointment of the fiduciary without obtaining a court order for appointment of a guardian, conservator, or other fiduciary under the authority provided in section 5502(b) of this title.*

(b) *APPEALS.*—(1) *If the Secretary determines a beneficiary to be mentally incompetent for purposes of appointing a fiduciary under this chapter, the Secretary shall provide such beneficiary with a written statement detailing the reasons for such determination.*

(2) *A beneficiary whom the Secretary has determined to be mentally incompetent for purposes of appointing a fiduciary under this chapter may appeal such determination.*

(c) *MODIFICATION.*—(1) *A beneficiary for whom the Secretary appoints a fiduciary under this chapter may, at any time, request the Secretary to—*

(A) remove the fiduciary so appointed; and

(B) have a new fiduciary appointed.

(2) *The Secretary shall comply with a request under paragraph (1) if the Secretary determines that the request is made in good faith and—*

(A) the fiduciary requested to be removed receives a fee from the beneficiary and a suitable volunteer fiduciary is available to assist the beneficiary; or

(B) the beneficiary provides credible information that the fiduciary requested to be removed is—

(i) not acting in the interest of the beneficiary; or

(ii) unable to effectively serve the beneficiary because of an irreconcilable personality conflict or disagreement.

(3) *The Secretary shall ensure that any removal or new appointment of a fiduciary under paragraph (1) does not delay or interrupt the beneficiary's receipt of benefits administered by the Secretary.*

(d) *INDEPENDENCE.*—*A fiduciary appointed by the Secretary shall operate independently of the Department to determine the actions that are in the interest of the beneficiary.*

(e) *PREDESIGNATION.*—*A veteran may predesignate a fiduciary by—*

(1) submitting written notice to the Secretary of the predesignated fiduciary; or

(2) submitting a form provided by the Secretary for such purpose.

(f) *APPOINTMENT OF NON-PREDESIGNATED FIDUCIARY.*—*If a beneficiary designates an individual to serve as a fiduciary under sub-*

section (e) and the Secretary appoints an individual not so designated as the fiduciary for such beneficiary, the Secretary shall notify such beneficiary of—

(1) the reason why such designated individual was not appointed; and

(2) the ability of the beneficiary to modify the appointed fiduciary under subsection (c).

(g) **PRIORITY OF APPOINTMENT.**—In appointing a fiduciary under this chapter, if a beneficiary does not designate a fiduciary pursuant to subsection (e), to the extent possible the Secretary shall appoint a person who is—

(1) a relative of the beneficiary;

(2) appointed as guardian of the beneficiary by a court of competent jurisdiction; or

(3) authorized to act on behalf of the beneficiary under a durable power of attorney.

§ 5502A. Supervision of fiduciaries

(a) **COMMISSION.**—(1)(A) In a case in which the Secretary determines that a commission is necessary in order to obtain the services of a fiduciary in the best interests of a beneficiary, the Secretary may authorize a fiduciary appointed by the Secretary to obtain from the monthly benefits provided to the beneficiary a reasonable commission for fiduciary services rendered, but the commission for any month may not exceed the lesser of the following amounts:

(i) The amount that equals three percent of the monthly monetary benefits under laws administered by the Secretary paid on behalf of the beneficiary to the fiduciary.

(ii) \$35.

(B) A commission paid under this paragraph may not be derived from any award to a beneficiary regarding back pay or retroactive benefits payments.

(C) A commission may not be authorized for a fiduciary who receives any other form of remuneration or payment in connection with rendering fiduciary services for benefits under this title on behalf of the beneficiary.

(D) In accordance with section 6106 of this title, a commission may not be paid to a fiduciary if the Secretary determines that the fiduciary misused any benefit payments of a beneficiary.

(E) If the Secretary determines that the fiduciary has misused any benefit or payments of a beneficiary, the Secretary may revoke the fiduciary status of the fiduciary.

(2) Where, in the opinion of the Secretary, any fiduciary receiving funds on behalf of a Department beneficiary is acting in such a number of cases as to make it impracticable to conserve properly the estates or to supervise the persons of the beneficiaries, the Secretary may refuse to make future payments in such cases as the Secretary may deem proper.

(b) **COURT.**—Whenever it appears that any fiduciary, in the opinion of the Secretary, is not properly executing or has not properly executed the duties of the trust of such fiduciary or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or

the dependents of the ward, then the Secretary may appear, by the Secretary's authorized attorney, in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper presentation of such matters. The Secretary, in the Secretary's discretion, may suspend payments to any such fiduciary who shall neglect or refuse, after reasonable notice, to render an account to the Secretary from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law. The Secretary may require the fiduciary, as part of such account, to disclose any additional financial information concerning the beneficiary (except for information that is not available to the fiduciary). The Secretary may appear or intervene by the Secretary's duly authorized attorney in any court as an interested party in any litigation instituted by the Secretary or otherwise, directly affecting money paid to such fiduciary under this section.

(c) PAYMENT OF CERTAIN EXPENSES.—Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment of any fiduciary or other person for the purpose of payment of benefits payable under laws administered by the Secretary or the removal of such fiduciary and appointment of another, and of expenses in connection with the administration of such benefits by such fiduciaries, or in connection with any other court proceeding hereby authorized, when such payment is authorized by the Secretary.

(d) TEMPORARY PAYMENT OF BENEFITS.—All or any part of any benefits the payment of which is suspended or withheld under this section may, in the discretion of the Secretary, be paid temporarily to the person having custody and control of the incompetent or minor beneficiary, to be used solely for the benefit of such beneficiary, or, in the case of an incompetent veteran, may be apportioned to the dependent or dependents, if any, of such veteran. Any part not so paid and any funds of a mentally incompetent or insane veteran not paid to the chief officer of the institution in which such veteran is a patient nor apportioned to the veteran's dependent or dependents may be ordered held in the Treasury to the credit of such beneficiary. All funds so held shall be disbursed under the order and in the discretion of the Secretary for the benefit of such beneficiary or the beneficiary's dependents. Any balance remaining in such fund to the credit of any beneficiary may be paid to the beneficiary if the beneficiary recovers and is found competent, or if a minor, attains majority, or otherwise to the beneficiary's fiduciary, or, in the event of the beneficiary's death, to the beneficiary's personal representative, except as otherwise provided by law; however, payment will not be made to the beneficiary's personal representative if, under the law of the beneficiary's last legal residence, the beneficiary's estate would escheat to the State. In the event of the death of a mentally incompetent or insane veteran, all gratuitous benefits under laws administered by the Secretary deposited before or after August 7, 1959, in the personal funds of patients trust fund on account of such veteran shall not be paid to the personal representative of such veteran, but shall be paid to the following persons living at the time of settlement, and in the order named: The surviving spouse, the children (without regard to age or marital sta-

tus) in equal parts, and the dependent parents of such veteran, in equal parts. If any balance remains, such balance shall be deposited to the credit of the applicable current appropriation; except that there may be paid only so much of such balance as may be necessary to reimburse a person (other than a political subdivision of the United States) who bore the expenses of last sickness or burial of the veteran for such expenses. No payment shall be made under the two preceding sentences of this subsection unless claim therefor is filed with the Secretary within five years after the death of the veteran, except that, if any person so entitled under said two sentences is under legal disability at the time of death of the veteran, such five-year period of limitation shall run from the termination or removal of the legal disability.

(e) ESCHEATMENT.—Any funds in the hands of a fiduciary appointed by a State court or the Secretary derived from benefits payable under laws administered by the Secretary, which under the law of the State wherein the beneficiary had last legal residence would escheat to the State, shall escheat to the United States and shall be returned by such fiduciary, or by the personal representative of the deceased beneficiary, less legal expenses of any administration necessary to determine that an escheat is in order, to the Department, and shall be deposited to the credit of the applicable revolving fund, trust fund, or appropriation.

(f) ASSISTANCE.—The Secretary shall provide to a fiduciary appointed under section 5502 of this title materials and tools to assist the fiduciary in carrying out the responsibilities of the fiduciary under this chapter, including—

- (1) handbooks, brochures, or other written material that explain the responsibilities of a fiduciary under this chapter;*
- (2) tools located on an Internet website, including forms to submit to the Secretary required information; and*
- (3) assistance provided by telephone.*

* * * * *

§ 5506. Definition of “Fiduciary”

[For purposes] *(a) For purposes of this chapter and chapter 61 of this title, the term “fiduciary” means—*

*(1) * * **

* * * * *

(b)(1) For purposes of subsection (a), the term “person” includes any—

(A) State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

(B) any State or local government agency with fiduciary responsibilities; or

(C) any nonprofit social service agency that the Secretary determines—

(i) regularly provides services as a fiduciary concurrently to five or more individuals; and

(ii) is not a creditor of any such individual.

(2) The Secretary shall maintain a list of State or local agencies and nonprofit social service agencies under paragraph (1) that are qualified to act as a fiduciary under this chapter. In maintaining

such list, the Secretary may consult the lists maintained under section 807(h) of the Social Security Act (42 U.S.C. 1007(h)).

§ 5507. Inquiry, investigations, and qualification of fiduciaries

[(a) Any certification of a person for payment of benefits of a beneficiary to that person as such beneficiary's fiduciary under section 5502 of this title shall be made on the basis of—

[(1) an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary, such inquiry or investigation—

[(A) to be conducted in advance of such certification;

[(B) to the extent practicable, to include a face-to-face interview with such person; and

[(C) to the extent practicable, to include a copy of a credit report for such person issued within one year of the date of the proposed appointment;

[(2) adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations); and

[(3) the furnishing of any bond that may be required by the Secretary.

[(b) As part of any inquiry or investigation of any person under subsection (a), the Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law which resulted in imprisonment for more than one year. If that person has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary finds that the person is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.

[(c)(1) In the case of a proposed fiduciary described in paragraph (2), the Secretary, in conducting an inquiry or investigation under subsection (a)(1), may carry out such inquiry or investigation on an expedited basis that may include waiver of any specific requirement relating to such inquiry or investigation, including the otherwise applicable provisions of subparagraphs (A), (B), and (C) of such subsection. Any such inquiry or investigation carried out on such an expedited basis shall be carried out under regulations prescribed for purposes of this section.

[(2) Paragraph (1) applies with respect to a proposed fiduciary who is—

[(A) the parent (natural, adopted, or stepparent) of a beneficiary who is a minor;

[(B) the spouse or parent of an incompetent beneficiary;

[(C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction; or

[(D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fiduciary does not exceed \$3,600, as adjusted pursuant to section 5312 of this title.

[(d) TEMPORARY FIDUCIARIES.—When in the opinion of the Secretary, a temporary fiduciary is needed in order to protect the assets of the beneficiary while a determination of incompetency is being made or appealed or a fiduciary is appealing a determination of misuse, the Secretary may appoint one or more temporary fidu-

ciaries for a period not to exceed 120 days. If a final decision has not been made within 120 days, the Secretary may not continue the appointment of the fiduciary without obtaining a court order for appointment of a guardian, conservator, or other fiduciary under the authority provided in section 5502(b) of this title.】

§5507. Inquiry, investigations, and qualification of fiduciaries

(a) *INVESTIGATION.*—Any certification of a person for payment of benefits of a beneficiary to that person as such beneficiary's fiduciary under section 5502 of this title shall be made on the basis of—

(1) *an inquiry or investigation by the Secretary of the fitness of that person to serve as fiduciary for that beneficiary to be conducted in advance of such certification and in accordance with subsection (b);*

(2) *adequate evidence that certification of that person as fiduciary for that beneficiary is in the interest of such beneficiary (as determined by the Secretary under regulations);*

(3) *adequate evidence that the person to serve as fiduciary protects the private information of a beneficiary in accordance with subsection (d)(1); and*

(4) *the furnishing of any bond that may be required by the Secretary in accordance with subsection (f).*

(b) *ELEMENTS OF INVESTIGATION.*—(1) *In conducting an inquiry or investigation of a proposed fiduciary under subsection (a)(1), the Secretary shall conduct—*

(A) *a face-to-face interview with the proposed fiduciary by not later than 30 days after the date on which such inquiry or investigation begins; and*

(B) *a background check of the proposed fiduciary to—*

(i) *in accordance with paragraph (2), determine whether the proposed fiduciary has been convicted of a crime; and*

(ii) *determine whether the proposed fiduciary will serve the best interest of the beneficiary, including by conducting a credit check of the proposed fiduciary and checking the records under paragraph (5).*

(2) *The Secretary shall request information concerning whether that person has been convicted of any offense under Federal or State law. If that person has been convicted of such an offense, the Secretary may certify the person as a fiduciary only if the Secretary finds that the person is an appropriate person to act as fiduciary for the beneficiary concerned under the circumstances.*

(3) *The Secretary shall conduct the background check described in paragraph (1)(B)—*

(A) *each time a person is proposed to be a fiduciary, regardless of whether the person is serving or has served as a fiduciary; and*

(B) *at no expense to the beneficiary.*

(4) *Each proposed fiduciary shall disclose to the Secretary the number of beneficiaries that the fiduciary acts on behalf of.*

(5) *The Secretary shall maintain records of any person who has—*

(A) *previously served as a fiduciary; and*

(B) *had such fiduciary status revoked by the Secretary.*

(6)(A) *If a fiduciary appointed by the Secretary is convicted of a crime described in subparagraph (B), the Secretary shall notify the*

beneficiary of such conviction by not later than 14 days after the date on which the Secretary learns of such conviction.

(B) A crime described in this subparagraph is a crime—

(i) for which the fiduciary is convicted while serving as a fiduciary for any person;

(ii) that is not included in a report submitted by the fiduciary under section 5509(a) of this title; and

(iii) that the Secretary determines could affect the ability of the fiduciary to act on behalf of the beneficiary.

(c) INVESTIGATION OF CERTAIN PERSONS.—(1) In the case of a proposed fiduciary described in paragraph (2), the Secretary, in conducting an inquiry or investigation under subsection (a)(1), may carry out such inquiry or investigation on an expedited basis that may include giving priority to conducting such inquiry or investigation. Any such inquiry or investigation carried out on such an expedited basis shall be carried out under regulations prescribed for purposes of this section.

(2) Paragraph (1) applies with respect to a proposed fiduciary who is—

(A) the parent (natural, adopted, or stepparent) of a beneficiary who is a minor;

(B) the spouse or parent of an incompetent beneficiary;

(C) a person who has been appointed a fiduciary of the beneficiary by a court of competent jurisdiction;

(D) being appointed to manage an estate where the annual amount of veterans benefits to be managed by the proposed fiduciary does not exceed \$3,600, as adjusted pursuant to section 5312 of this title; or

(E) a person who is authorized to act on behalf of the beneficiary under a durable power of attorney.

(d) PROTECTION OF PRIVATE INFORMATION.—(1) A fiduciary shall take all reasonable precautions to—

(A) protect the private information of a beneficiary, including personally identifiable information; and

(B) securely conducts financial transactions.

(2) A fiduciary shall notify the Secretary of any action of the fiduciary that compromises or potentially compromises the private information of a beneficiary.

(e) POTENTIAL MISUSE OF FUNDS.—(1) If the Secretary has reason to believe that a fiduciary may be misusing all or part of the benefit of a beneficiary, the Secretary shall—

(A) conduct a thorough investigation to determine the veracity of such belief; and

(B) if such veracity is established, transmit to the officials described in paragraph (2) a report of such investigation.

(2) The officials described in this paragraph are the following:

(A) The Attorney General.

(B) Each head of a Federal department or agency that pays to a fiduciary or other person benefits under any law administered by such department or agency for the use and benefit of a minor, incompetent, or other beneficiary.

(f) BOND.—In determining whether a proposed fiduciary is required to furnish a bond under subsection (a)(4), the Secretary shall consider—

- (1) *the existence of any familial or other personal relationship between the proposed fiduciary and the beneficiary; and*
- (2) *the care the proposed fiduciary has taken to protect the interests of the beneficiary.*

(g) **LIST OF FIDUCIARIES.**—*Each regional office of the Veterans Benefits Administration shall maintain a list of the following:*

- (1) *The name and contact information of each fiduciary, including address, telephone number, and email address.*
- (2) *With respect to each fiduciary described in paragraph (1)—*
 - (A) *the date of the most recent background check and credit check performed by the Secretary under this section;*
 - (B) *the date that any bond was paid under this section;*
 - (C) *the name, address, and telephone number of each beneficiary the fiduciary acts on behalf of; and*
 - (D) *the amount that the fiduciary controls with respect to each beneficiary described in subparagraph (C).*

* * * * *

§ 5509. [Authority to require fiduciary to receive payments at regional offices of the Department when failing to provide required accounting] *Annual reports and accountings of fiduciaries*

(a) **REQUIRED REPORTS AND ACCOUNTINGS.**—*The Secretary [may require a fiduciary to file a] shall require a fiduciary to file an annual report or accounting pursuant to regulations prescribed by the Secretary. The Secretary shall transmit such annual report or accounting to the beneficiary and any legal guardian of such beneficiary.*

* * * * *

(c) **MATTERS INCLUDED.**—*Except as provided by subsection (f), an annual report or accounting under subsection (a) shall include the following:*

- (1) *For each beneficiary that a fiduciary acts on behalf of—*
 - (A) *the amount of the benefits of the beneficiary provided under any law administered by the Secretary accrued during the year, the amount spent, and the amount remaining; and*
 - (B) *if the fiduciary serves the beneficiary with respect to benefits not administered by the Secretary, an accounting of all sources of benefits or other income the fiduciary oversees for the beneficiary.*
- (2) *A list of events that occurred during the year covered by the report that could affect the ability of the fiduciary to act on behalf of the beneficiary, including—*
 - (A) *the fiduciary being convicted of any crime;*
 - (B) *the fiduciary declaring bankruptcy; and*
 - (C) *any judgments entered against the fiduciary.*

(d) **RANDOM AUDITS.**—*The Secretary shall annually conduct random audits of fiduciaries who receive a commission pursuant to subsection 5502A(a)(1) of this title.*

(e) **STATUS OF FIDUCIARY.**—*If a fiduciary includes in the annual report events described in subsection (c)(2), the Secretary may take appropriate action to adjust the status of the fiduciary as the Sec-*

retary determines appropriate, including by revoking the fiduciary status of the fiduciary.

(f) *CAREGIVERS AND CERTAIN OTHER FIDUCIARIES.*—(1)(A) *In carrying out this section, the Secretary shall ensure that a caregiver fiduciary is required only to file an annual report or accounting under subsection (a) with respect to the amount of the benefits of the beneficiary provided under any law administered by the Secretary—*

(i) spent on—

(I) food and housing for the beneficiary; and

(II) clothing, health-related expenses, recreation, and other personal items for the beneficiary; and

(ii) saved for the beneficiary.

(B) *The Secretary shall coordinate with the Under Secretary for Benefits and the Under Secretary for Health to—*

(i) minimize the frequency with which employees of the Department visit the home of a caregiver fiduciary and beneficiary; and

(ii) limit the extent of supervision by such Under Secretaries with respect to such a fiduciary and beneficiary.

(C) *In this paragraph, the term “caregiver fiduciary” means a fiduciary who—*

(i) in addition to acting as a fiduciary for a beneficiary, is approved by the Secretary to be a provider of personal care services for the beneficiary under paragraph (3)(A)(i) of section 1720G(a) of this title;

(ii) in carrying out such care services to such beneficiary, has undergone not less than four home visits under paragraph (9)(A) of such section; and

(iii) has not been required by the Secretary to take corrective action pursuant to paragraph (9)(C) of such section.

(2) *In carrying out this section, the Secretary may adjust the matters required under an annual report or accounting under subsection (a) with respect to a fiduciary whom the Secretary determines to have effectively protected the interests of the beneficiary over a sustained period.*

§ 5510. Annual report

【The Secretary shall include in the Annual Benefits Report of the Veterans Benefits Administration or the Secretary’s Annual Performance and Accountability Report】 *Not later than July 1 of each year, the Secretary shall submit to the Committees on Veterans’ Affairs of the House of Representatives and the Senate a separate report containing information concerning fiduciaries who have been appointed to receive payments for beneficiaries of the Department. As part of such information, the Secretary shall separately set forth the following:*

(1) * * *

* * * * *

CHAPTER 59—AGENTS AND ATTORNEYS

Sec.

5901. Prohibition against acting as claims agent or attorney.

* * * * *

5906. Provision of access to case-tracking information.

* * * * *

§ 5906. Provision of access to case-tracking information

(a) *IN GENERAL.*—(1) *In accordance with subsection (b), the Secretary shall provide a covered employee with access to the case-tracking system to provide a veteran with information regarding the status of a claim submitted by such veteran if such employee is acting under written permission or a power of attorney executed by such veteran.*

(2) *In providing a covered employee with access to the case-tracking system under paragraph (1), the Secretary shall ensure—*

(A) *that such access—*

(i) *is provided in a manner that does not allow such employee to modify the data contained in such system; and*

(ii) *does not include access to medical records; and*

(B) *that each time a covered employee accesses such system, the employee must certify that such access is for official purposes only.*

(b) *PRIVACY CERTIFICATION COURSE.*—*The Secretary may not provide a covered employee with access to the case-tracking system under subsection (a)(1) unless the covered employee has successfully completed a certification course on privacy issues provided by the Secretary.*

(c) *TREATMENT OF DISCLOSURE.*—*The access to information by a covered employee pursuant to subsection (a)(1) shall be deemed to be—*

(1) *a covered disclosure under section 552a(b) of title 5; and*

(2) *a permitted disclosure under regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).*

(d) *DEFINITIONS.*—*In this section:*

(1) *The term “case-tracking system” means the system of the Department of Veterans Affairs that provides information regarding the status of a claim submitted by a veteran.*

(2) *The term “covered employee” means an employee of a State or local governmental agency (including a veterans service officer) who, in the course of carrying out the responsibilities of such employment, assists veterans with claims for any benefit under the laws administered by the Secretary.*

* * * * *

CHAPTER 61—PENAL AND FORFEITURE PROVISIONS

* * * * *

§ 6107. Reissuance of benefits

(a) *NEGLIGENT FAILURE BY SECRETARY.*—(1) * * *

(2) *There shall be considered to have been a negligent failure by the Secretary to investigate and monitor a fiduciary in the following cases:*

(A) * * *

* * * * *

(C) In any other case in which actual negligence is shown,
*including by the Secretary not acting in accordance with section
 5507 of this title.*

* * * * *

